

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Call to Order: By **CHAIRMAN EDITH CLARK**, on January 21, 2003 at 8:03 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edith Clark, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Dick Haines (R)
Rep. Joey Jayne (D)
Sen. Bob Keenan (R)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robert V. Andersen, OBPP
Pat Gervais, Legislative Branch
Lois Steinbeck, Legislative Branch
Sydney Taber, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp refers to material below it.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None.
Executive Action: Disability Services Division
Director's Office

{Tape: 1; Side: A; Approx. Time Counter: 1.8 - 5.9}

Pat Gervais, Legislative Fiscal Division (LFD), distributed and walked the Subcommittee through a spreadsheet on General Fund, Title XX, Part C, and other benefits. She explained that the Department is proposing a \$3.4 million general fund reduction per year, which would leave \$935,000 per year in the funding for children's services. This would not be adequate general fund to allow the State to draw down the federal Part C Grant. Maintenance of Effort (MOE) for the Part C Grant is \$1.2 - \$1.4 million. If the additional reduction is implemented, the Department would not be pulling down any federal Part C funds because it would not be matching any MOE. Part C has an MOE, but it is under the Individuals with Disabilities Education Act (IDEA). The act requires that eligible children receive services and does not allow capping the program at the funding of MOE and the federal grant. If MOE and federal grant funds are expended, general fund must then be expended.

EXHIBIT(jhh12a01)

{Tape: 1; Side: A; Approx. Time Counter: 5.9 - 8.2}

REP. JAYNE asked if there was \$935,000 per year for the biennium for Part C, to which **Ms. Gervais** said that the amount is what would remain if the Subcommittee accepted the Department's recommendation to take a reduction in this to reach the 2000 base. It is not part of the Executive Budget. In response to a question from **CHAIRMAN CLARK**, **Ms. Gervais** said that the general fund in the top portion of the spreadsheet could be reallocated to children's services if the Subcommittee wished. The potential options for refinancing of children's services are: a CHIP carve-out program, a Medicaid waiver, and reallocation of general fund between children and adults.

EXECUTIVE ACTION ON DISABILITY SERVICES DIVISION

Statewide Present Law Adjustments

{Tape: 1; Side: A; Approx. Time Counter: 9 - 11}

Motion: **REP. CLARK** moved TO ADOPT DP 135, THE FY2000 BASE FOR ALL FUNDING EXCEPT FOR GENERAL FUND AND STATEWIDE PRESENT LAW ADJUSTMENTS.

Discussion:

REP. JAYNE asked if the motion took them to the FY2000 level.

Ms. Gervais explained that the general fund is established at FY 2000 and this establishes that the base for state special revenue

(SSR) and federal funds would be 2002 plus statewide present law adjustments.

Vote: Motion carried 6-0 on a voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 11 - 13.3}

Motion: SEN. COBB moved TO ACCEPT DP 86, MAINTAIN MDC CERTIFICATION.

Discussion:

Ms. Gervais pointed out that the costs for contract investigative services were included in both DP 86 and DP 95. She recommended that one of the DPs be reduced by \$25,000 per year.

SEN. COBB withdrew his motion and made a new motion.

Motion/Vote: SEN. COBB moved TO ADOPT DP 86 REDUCED BY \$25,000 GENERAL FUND EACH YEAR OF THE BIENNIUM. Motion carried 4-2 with REP. HAINES and SEN. KEENAN voting no by voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 13.3 - 14.4}

Motion/Vote: SEN. COBB moved TO ADOPT DP 87, DDP CHANGE IN FMAP. Motion carried 6-0 by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 14.4 - 20.8}

Motion: REP. CLARK moved THAT THE AMOUNT BE USED TO OFFSET THE UNALLOCATED AMOUNT FOR THE REDUCTION TO GET TO THE LOWER BASE.

Discussion:

REP. JAYNE asked for clarification. **Ms. Gervais** explained that in the computer system they have entered the DP that represents \$24 million per year, which reduced the general fund to the FY00 base. If the motion is passed, LFD would change that DP by \$38,000 because the Subcommittee would have specified that \$38,000 come from this change. If the motion does not pass, the same amount will be shown in the unspecified DP and show the \$38,000 as an additional reduction to the budget. **SEN.**

STONINGTON asked for further elucidation. **Ms. Gervais** explained that federal participation goes up in the first year so general fund goes down and federal participation goes down in the second year so general fund goes up. The net biennial affect is a \$6,700 change, but there is a decrease in one year and an increase in the other. **Ms. Gervais** said that it would show a \$38,000 in the first year of the biennium, and a \$31,000 increase in the second year of the biennium.

{Tape: 2; Side: A; Approx. Time Counter: 19.9 - 20.2}

Motion/Vote: Restating the motion, REP. CLARK moved THAT THE AMOUNT BE USED TO OFFSET THE UNALLOCATED AMOUNT OF THE REDUCTION TO GET TO THE NEW LOWER BASE. Motion failed 3-3 with SEN. KEENAN, REPS. CLARK and HAINES voting aye by voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 20.8 - 25.2}

Ms. Gervais reviewed DP 89, the request for federal authority to reinvest general fund savings created through refinancing. If DPHHS can find additional federal funds and achieve more favorable match, it would allow them to draw down more federal funds, potentially refinancing some services. This raises the issue of whether to allow the Department to reinvest general fund savings to strengthen services within the program or to expand services. Additionally, if federal funds are appropriated, it changes how some of the appropriation statutes and some of the requirements for general fund reduction apply. SEN. STONINGTON said that she would prefer that the Subcommittee be more specific about how the money is spent, and would prefer to skip it. The Subcommittee agreed to not move on DP 89.

{Tape: 1; Side: A; Approx. Time Counter: 25.2 - 26.2}

Ms. Gervais explained that DP 90 is an adjustment of \$50,000 general fund and \$180,000 federal funds and would annualize rent increases that occurred in FY02 into the budget. The additional funding would be used for offices in Billings, Kalispell, Bozeman, Butte, Miles City, Great Falls, and Havre.

{Tape: 1; Side: A; Approx. Time Counter: 26.2 - 34.4}

Motion: SEN. COBB moved TO ACCEPT DP 90, DSD BASE ADJUSTMENTS.

Discussion:

SEN. KEENAN asked if the rent has gone up. Gail Briese-Zimmer, Department of Public Health and Human Services (DPHHS), responded that it reflects actual increases. REP. JAYNE asked if these were unanticipated costs in the last year. Ms. Briese-Zimmer explained that DPHHS contracts for the various offices, and there are annualized rent increases in those contracts. Two offices were moved due to unhealthy conditions which increased rent costs. The contracts have been annualized for a number of years for 1% to 3% per year. Contracts are for five to ten years, so within that time there could be another such request. REP. HAINES asked how the moves were paid for. Ms. Briese-Zimmer said that the moves were anticipated so the funds were requested in the prior session. REP. JAYNE asked how they arrived at \$50,000. Ms. Briese-Zimmer said that it is based on square footage and

match rate. Responding to a question from **REP. HAINES, Ms. Briese-Zimmer** said that if they don't receive the funding, they will have to cut elsewhere.

Vote: Motion carried 4-2 with REPS. CLARK and HAINES voting no by voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 34.4 - 38}

Motion: SEN. COBB moved TO ADOPT DP 91, MDC BASE ADJUSTMENTS.

Discussion:

Ms. Gervais explained that the Department included in the DP a continuation of reductions that were made during the biennium. DPHHS took the estimated cost and offset it with \$288,000 to reflect the continuation of reductions made during the biennium.

Vote: Motion failed 3-3 with REP. JAYNE and SENS. COBB and STONINGTON voting aye by voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 38 - 39.5}

Motion/Vote: SEN. COBB moved TO ADOPT DP 92, EHSC BASE ADJUSTMENT. Motion failed 3-3 with REP. JAYNE, SENS. COBB and STONINGTON voting aye by voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 39.1 - 43.1}

Motion: SEN. COBB moved TO ADOPT DP 93, ANNUALIZATION OF TUITION INCREASES.

Discussion:

Ms. Gervais explained that tuition from the university system is purchased, and clients may be sent to classes at program expense. The July 1, 2003 date may be a misprint; it should be July 1, 2002. These are tuition increases that occurred in the current biennium, and DPHHS is requesting funding to continue the increased tuition throughout the next biennium. If the DP is not approved, DPHHS would have to reduce the level of service and pay for fewer hours of tuition.

Vote: Motion carried 4-2 with REP. CLARK and SEN. KEENAN voting no on a voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 43.1 - 50}

Motion: SEN. COBB moved TO ADOPT DP 94, DDP WAGE PARITY.

{Tape: 1; Side: B; Approx. Time Counter: 2 - 5.5}

Discussion:

Ms. Gervais explained the history of the direct care worker increases in Disability Services Division (DSD) in the last legislative session. The increase was 9% the first year and 5% the second year of the biennium. This DP would annualize the cost of the provider rate increase that occurred in the second year of the biennium and would not have been included in the FY02 base. **Ms. Gervais** stated that this is the only division within the Department that included annualization of provider rate increases in the Executive Budget for the 2005 biennium. In explanation of annualization, **Ms. Gervais** said that the term refers to increases in the second year of the biennium that are not reflected in the base budget. Additional expenditures included in the second year of the biennium are not included in the starting point for budget development of the next biennium. Annualization means that they are providing funding for the increases that occurred in the second year of the biennium so that they will be maintained throughout the 2005 biennium. **REP. JAYNE** remarked that she thinks it is important to support this.

Vote: Motion carried 6-0 by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 5.5 - 6.4}

Motion/Vote: SEN. COBB moved TO ADOPT DP 96, ANNUALIZATION OF VR PROVIDER RATE INCREASES. Motion carried 6-0 by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 6.4 - 8.6}

Motion: SEN. COBB moved TO ADOPT DP 97, DDS BASE ADJUSTMENTS.

Discussion:

Ms. Gervais explained that DP 97 is for Disability Determination Services, which is 100% federally funded. **REP. HAINES** asked about the anticipated 10% increase. **Ms. Gervais** said that it is based on Social Security Administration's estimated increase in Montana's workload for eligibility determination for Social Security.

Vote: Motion carried 6-0 by voice vote.

In reference to DP 98, **Ms. Gervais** explained that the Medicaid reimbursement goes first to pay bonds and the balance goes to general fund. The increased authority in this DP facilitates the accounting transactions to accomplish this.

{Tape: 1; Side: B; Approx. Time Counter: 8.6 - 9.9}

Motion/Vote: SEN. COBB moved TO ADOPT DP 98, MDC AND EHSC MEDICAID AUTHORITY. Motion carried 6-0 on a voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 9.9 - 14.2}

Discussing DPs 290, 291, 292, and 293, **Ms. Gervais** explained that positive action would reduce the budget lower than was expended in FY02, and no action or negative action would leave funding at FY02 level. She said that there would be four or five days for wrap up at the end. The Subcommittee agreed to defer on these DPs and revisit them later in anticipation of funding at that time.

{Tape: 1; Side: B; Approx. Time Counter: 14.2 - 24.9}

LFD Issue with DP 82

Ms. Gervais explained that DP 82 is a request for general fund to replace federal funds that will not be available to DPHHS in the 2005 biennium. Disability Services Division (DSD) has had funds transferred from Temporary Assistance to Needy Families (TANF) to Title XX that they have been using to support services. Additionally, they have had the Title XX grant, which has been decreasing. The LFD issue is that it requests the additional general fund, but does not reduce federal authority. LFD staff recommends that if the DP is accepted, federal funds be reduced by a like amount as the general fund increases.

New Proposals

{Tape: 1; Side: B; Approx. Time Counter: 24.9 - 26.5}

Motion: SEN. COBB moved TO ADOPT DP 82, DD FUNDING AT CURRENT LEVEL OF SERVICE WITH THE ADDITION THAT THEY INCREASE FEDERAL FUNDS BY LIKE AMOUNT.

Discussion:

SEN. STONINGTON asked for clarification, and **Ms. Gervais** said that there are two issues involved. In the 2003 biennium, the 2001 legislature approved the transfer of part of the funds in the TANF block grant into a Title XX grant, which can be used for other services. \$1.4 million per year was used in Developmental Disabilities (DD) Services. Because of the increase in caseloads, the amount of TANF federal funds available is adequate only to support the projected caseload and the administrative costs of the program. At present, there are not enough estimated TANF funds available to do any transfers from that block grant to other grants. Additionally, there is an anticipated decrease in

the amount of the federal Title XX grant, due to a general decline in amount over the last five to ten years.

In further discussion of the issue, **Ms. Gervais** said that given the recent history, further decline in the Title XX grant is anticipated. It has been suggested that the decline is due to the fact that Title XX is not a specific block grant with a specific constituency. Montana has chosen to use the entire grant within the DD area, but the Title XX grant can also be used to provide childcare as well as child and adult protective services. States have a great deal of flexibility.

Lois Steinbeck, LFD, commented on the history of Title XX. At one time the Subcommittee budgeted Title XX across several divisions, ultimately concentrating it in DD. **SEN. STONINGTON** asked what Title XX pays for specifically. **Joe Mathews, DSD**, replied that they use the money to pay for work programs, day programs, and basic DD services. One reason all the Title XX was put into DD is that it could be reported on exactly. It is only within the last two biennia that there has been such a decline in Title XX funds. **SEN. STONINGTON** asked if all the services supported by Title XX would end up in general fund. **Mr. Mathews** said that it is federal money, and they only know from year to year what will happen. It is hoped that it will stabilize. **REP. HAINES** asked how much would be left, to which **Mr. Mathews** responded that after this reduction it would be about \$5.4 million. Responding to a question from **CHAIRMAN CLARK**, **Mr. Mathews** said that if the funds were not there it would impact 400-500 individuals and would eliminate services unless replaced with general fund.

{Tape: 1; Side: B; Approx. Time Counter: 26.5 - 27.5}

Vote: Motion carried 4-2 with **REP. CLARK** and **SEN. KEENAN** voting no by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 27.5 - 31.2}

Motion: **SEN. COBB** moved TO ADOPT DP 88, DDPAC FEDERAL GRANT INCREASE.

Discussion:

Ms. Gervais explained that the Developmental Disabilities Advisory Council (DDPAC) is 100% federally funded. They will receive an anticipated increase in the level of federal funding in the 2005 biennium. **REP. HAINES** asked for clarification of the use of the money. **Ms. Gervais** explained that DDPAC is a planning, training, and advisory council. There is no match. **REP. HAINES** asked how many Full Time Employees (FTE) are

involved and what they would do without the money. **Mr. Mathews** said that they would not be able to accept the additional federal funds that come with the grant increase.

Vote: Motion carried 5-1 with **SEN. KEENAN** voting no by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 32.2 - 49.5}

Ms. Gervais reviewed the history of DP 85. In the last session, \$1.4 million in funding for the Montana Developmental Center (MDC) was appropriated as a one-time-only appropriation. Language was also included in HB 2 to encourage the Department to reduce the population at the two state institutions to a population of 88. This was appropriated as a one-time-only to assure that the progress of moving people from institutions to the community would be reviewed.

SEN. KEENAN asked where the Department is on this. **Mr. Sturm** said that there are 31 individuals in Eastmont and 91 at MDC.

SEN. KEENAN said that the intent of the Subcommittee was to ultimately close Eastmont as a facility for the developmentally disabled and transfer it to Department of Corrections as a facility for mentally ill and geriatric prisoners, which would be a better use for the facility. He has spoken to the mayor of Glendive, who has no problems with it as long as it can be accomplished. He asked if the remaining residents are critical needs patients and if there are group home options. **John Chappuis, (Deputy Director of DPHHS)**, reported that 18 individuals will be moved out to the community by the end of the year, 16 at MDC and 2 at Eastmont. At that point, the remaining residents at Eastmont could be moved to MDC. There is a capacity of 112 individuals at MDC, but the census includes different types of clients. Most of the clients moved from Eastmont could be placed in the nonambulatory total care unit at MDC.

{Tape: 1; Side: B; Approx. Time Counter: 38.4 - 43.5}

Mr. Chappuis responded to a question from **SEN. COBB** that they would need the money in this DP as well as additional money for closure of Eastmont. The other issue is rearranging Eastmont with a funding switch.

Director Gray remarked that they will need not only DP 85, but also DP 91 in order to move the population to MDC. **SEN.**

STONINGTON asked if there were proposals in the decision packages to close Eastmont and transfer it to Department of Corrections.

Director Gray said that there is no such proposal and reviewed the measure the Department had taken to move clients out: construction and implementation of three group homes to move the 18 clients out. If the move from Eastmont were to take place,

six to eight more patients in MDC would need to be moved out to the community. **SEN. STONINGTON** stated that it sounds as if they are ready to make the move and asked if that were the case.

Director Gray said that if it were the decision of the legislature, they would do it. There is a long-term plan that they have developed for this.

Mr. Mathews interjected that this is the first time that they have had the capacity at MDC to do this. He added that there are people in residential care for whom community services would be best. A division concern is that should they move people into MDC and then have to stop, there may not be a comprehensive plan to move at least some people on a regular basis. **SEN. STONINGTON** then queried **Mr. Mathews** if he thought that by the end of the 2005 biennium they could close Eastmont and make those moves.

Mr. Mathews said that it would be a step in the right direction. The question would then be how many in one residential facility could they continue to move out. He reviewed the intent of the Olmstead Act and how DPHHS has tried to demonstrate its good faith moving individuals to community settings. He commented further that there are still individuals in MDC that should be in the community.

{Tape: 1; Side: B; Approx. Time Counter: 42 - 48.5}

SEN. COBB asked if they need this DP as well as DP 91. **Mr. Mathews** said that there is a Medicaid certification issue in that if they move more people in they need to be able to demonstrate that they have the capability to handle this. **SEN. COBB** said that they would need a bill to change the statute for Eastmont with which **Mr. Mathews** concurred.

{Tape: 2; Side: A; Approx. Time Counter: 0.3 - 0.8}

Responding to a question from **SEN. KEENAN** as to who owns Eastmont, **Director Gray** said that it belongs to the Department of Administration(DOA).

REP. HAINES asked for the total cost of the two institutions.

Mr. Mathews responded that the total budget for both is \$17 million in general fund. **Ms. Gervais** referred members to a summary on B-131 of the analysis; the requested budget for the 2005 biennium is \$18.3 million in FY04 and \$18.4 million in FY05. The two institutions are 100% general fund, and the \$10 to \$12 million Medicaid reimbursement is deposited into the general fund after the bond repayment. The net is \$6 to \$7 million.

LFD Issue Regarding Consistency

Ms. Gervais observed that it would take a statutory change to close Eastmont. The Olmstead lawsuit also applies to mental health services. The LFD issue involved is that one division is actively pursuing the movement of people to communities, and the other division is not as aggressively pursuing movement.

Director Gray reminded the Subcommittee that it did approve action to move people into the community and reduce numbers at the Montana Mental Health Nursing Care Facility (MMHNCF).

{Tape: 2; Side: A; Approx. Time Counter: 4.7 - 5.8}

Ms. Steinbeck responded that the staff issue is still viable. All other divisions have direct care staff, but only DD is requesting annualization and continuation of the rate increases. Additionally, it has also requested community services increases above and beyond the level of FY03. The big mental health restructure takes \$16 million out of community services of \$22 million that was spent. LFD staff has concerns about the consistency of administration and consistency of application looking at similar divisions across the board where budgetary considerations are concerned. **Ms. Steinbeck** stated that everything Director Gray said is true, but a comparison of the two divisions shows inequities in the manner in which they are budgeted.

{Tape: 2; Side: A; Approx. Time Counter: 5.8 - 8}

Responding to a request for explanation of the choices from **SEN. STONINGTON**, **Director Gray** said that there are a number of reasons, but litigation in DD and long-term movement out to communities are the big reason for the choice. LFD makes good points. DPHHS did not want to cut community services and mental health. She emphasized that the increases don't show the total picture. It is not a big increase in how much DD is actually paying, it is who pays the bill. There is a significant reduction in community services in mental health in the budget. Movement out of institutions has been done consistently throughout the Department.

{Tape: 2; Side: A; Approx. Time Counter: 8 - 9.9}

Ms. Steinbeck said that while she respects what the Department and executive are having to do, it is her role to examine policy decisions regarding the budget. The spending decisions imply policy decisions and set priorities. Services once funded by Title XX are being cut, and general fund there has not been backfilled. This is a department-wide decision to transfer resources to one policy area and is a legitimate issue on which the Subcommittee could pass judgment. The budget has the overall

effect of transferring resources among divisions, which is the overall consistency issue.

{Tape: 2; Side: A; Approx. Time Counter: 9.9 - 12}

SEN. STONINGTON expressed her concern over the consistency issue and said that she is very uneasy about the decision to cut mental health services. She prefers to defer on the DPs until they have discussed departmental priorities. She would like to see the Montana Mental Health Services Plan (MMHSP) reinstated.

REP. JAYNE asked about the independent investigator in the DP. **Mr. Chappuis** explained that there is a full-time investigator, but also a contract investigator for back-up purposes. The Department is required to have an investigator onsite when there is an abuse allegation. **Gail Briese-Zimmer, (DPHHS)**, further explained that the individual is on staff, but the money is not in the base year for the contract.

{Tape: 2; Side: A; Approx. Time Counter: 14.9 - 15.7}

Motion/Vote: **SEN. COBB** moved DP 95, MDC DIRECT CARE FTE. Motion failed 3-3 with **REP. JAYNE**, **SENS. COBB** and **STONINGTON** voting aye by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 15.8 - 24}

Motion: **SEN. STONINGTON** moved TO MAKE A COMMITTEE BILL TO CLOSE EASTMONT AND BACKFILL.

Discussion:

REP. JAYNE asked for Department response to the motion. **Director Gray** said that the Department has been moving to reduce people in institutions. If there is opportunity for the Glendive community to have some other services as referred to by **SEN. KEENAN**, this is the time for closure. Since there is capacity at MDC to do this, the time is right. Those appropriate for community placement would go there, others might go to MDC.

Responding to follow up by **REP. JAYNE**, **Mr. Sturm** said that there are probably 30-40 individuals that are referred for community services. In further follow up, **REP. JAYNE** asked whether they are certain that communities have services available for these individuals. **Director Gray** emphasized that people are not poorly served at Eastmont Human Services (EHS), but receive exceptional care. She reviewed the process by which people are moved into the community and expressed the caveat that not all people moved into the community will be successful. Some may have to return to the institution. The Department feels that MDC has the capacity to take returns from the community setting.

{Tape: 2; Side: A; Approx. Time Counter: 24 - 27.6}

Mr. Mathews said that the different populations at MDC must be kept separate, so the number of available beds depends on the type of population. The increase in forensic population makes the movement of the medically fragile into the community more important. If providers are not adequately paid, they will not want to take these patients, so the division is trying to shore up community-based services while moving more people out. Not all communities in Montana have the capability to serve some of these individuals.

{Tape: 2; Side: A; Approx. Time Counter: 27.6 - 29.8}

In response to a question from **REP. JAYNE** regarding the savings involved, **Director Gray** said that the estimate is \$500,000 general fund the first year, and \$1.5 million the second year. There are many initial costs which must be considered. **Director Gray** said that it would be the legislature's decision to decide where the savings would go.

{Tape: 2; Side: A; Approx. Time Counter: 29.8 - 33.7}

SEN. KEENAN commented on the statutes that would need to be changed. He suggested that if the Department of Corrections (DOC) were to take over Eastmont, then it would be necessary to have a psychiatrist in Glendive. The Subcommittee has the opportunity to do a lot of good for the community of Glendive, for DOC, for the prison mental health patients, and to consolidate the two institutions. Medicaid eligibility would then go to Eastmont. He also suggested that they would need more than 97 FTE.

{Tape: 2; Side: A; Approx. Time Counter: 33.7 - 36.2}

REP. HAINES requested a breakdown of the cost of closing Eastmont, including moving costs, staffing issues, and such issues. He would want to see closure occur in one biennium. **SEN. STONINGTON** added that she would like to see a time line included in that.

{Tape: 2; Side: A; Approx. Time Counter: 36.2 - 39}

Responding to a question from **REP. JAYNE**, **Director Gray** said that there are additional costs to making the move. Some of the fixed cost would be reduced by the elimination of one institution. The \$2 million is a net figure. In further discussion, the motion was clarified to be a motion for the committee to do a bill to close Eastmont.

{Tape: 2; Side: A; Approx. Time Counter: 39 - 42.7}

SEN. KEENAN commented that the last time the statutes were tweaked was in 1985. He read a couple of sentences of the statute regarding Eastmont, "The Center shall provide services

similar to those provided at the Montana Developmental Center, however, the Center may not be a duplication of the Montana Developmental Center, but shall be an extension." **Mr. Sturm** said that Eastmont and MDC are both under the same Intensive Care Facility for the Mentally Retarded (ICM/FR) guidelines and the services are much the same because they follow the same guidelines. The specific plan and type of program is different, but the broader requirements are the same. **SEN. KEENAN** commented that it sounds as if Eastmont is secondary to MDC.

{Tape: 2; Side: A; Approx. Time Counter: 42.7 - 49.3}

REP. JAYNE commented that she understands that people need to be integrated into the community, but hopes that it is the number one priority and not because there is a budget deficit. Expressing her concerns that community services are available, she asked how the Department would assure this. She said that many of the services are difficult to provide in communities and questioned whether it would work. **Mr. Mathews** replied that some of the people in the facility are similar to people that are provided for in the community. The division goes to great pains to ensure that someone released from residential services will receive services that are as good or better than in the state facility. He stressed that Montana community providers are excellent. There are times when it does not work for an individual, but there is demonstrated evidence that the system works.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 1.6}

Mr. Sturm added that staff does not place individuals that cannot be safely and properly treated in the community.

{Tape: 2; Side: B; Approx. Time Counter: 1.6 - 2.9}

Motion/Vote: **SEN. STONINGTON** moved TO RESTATE THE MOTION TO HAVE A COMMITTEE BILL TO CLOSE EASTMONT. Motion carried 6-0.

{Tape: 2; Side: B; Approx. Time Counter: 2.9 - 4.1}

SEN. STONINGTON asked **CHAIRMAN CLARK** if she would be interested in reconsidering DP 95. **CHAIRMAN CLARK** said that she is not interested at this time.

{Tape: 2; Side: B; Approx. Time Counter: 4.1 - 5}

Director Gray offered to prepare a plan with the LFD to show what would be necessary in order to make closure of Eastmont happen. They would have a time line and would include decision packages necessary to make it happen.

{Tape: 2; Side: B; Approx. Time Counter: 5 - 9.1}

Directing his comments to **Director Gray**, **SEN. KEENAN** said that in looking at the budget, 77% goes to benefit services in the base

year and 11% for personal services. The operating expenses are projected to be \$88 million in FY04 and \$87 million in FY05. He would like the employees of DPHHS to squeeze the operating expenses line item and give at the office. He would like to get into the fourth level of the State Accounting Budget and Revenue System (SABRS) to glean money out of operating expenses, rather than an across the board motion. There are other state agencies that have ridiculous expenses in those expenditure line items. The expenses get buried in the operating expenses of state government, and have nothing to do with the mission statements or services that the Subcommittee is anguishing over.

SEN. KEENAN further remarked that the Subcommittee has the talent and energy to lead the legislature in this area. It can do it now or continue to flounder on the DPs. If the Subcommittee does not get it done, it will go to free conference committee where they do not understand the issues.

{Tape: 2; Side: B; Approx. Time Counter: 9.1 - 10}

Director Gray cautioned that DPHHS has experienced ten other cuts in the last biennium and while it may be able to do more, they have made significant cuts, and may not have the discretion that other agencies have to make further cuts.

{Tape: 2; Side: B; Approx. Time Counter: 10 - 13.8}

Referring to Operations and Technology Division (OTD), **SEN. KEENAN** said that in operating expenses of OTD there is \$21 million. He remarked that he would rather use that money on pharmacy or disease management in mental health than on computers or the Technology Pavilion. Referring to the Olmstead Act in relation to DD, he commented further that it is an issue in mental health as well. The primary focus of mental health is recovery and community placement, but it is difficult for mental health to show the progress. He said that the people of Montana would rather see the money spent on people in need rather than on computers.

{Tape: 2; Side: B; Approx. Time Counter: 13.8 - 21.5}

Ms. Steinbeck commented that LFD had not delved to the fourth level in operating expenses. Out of the \$80 million mentioned, \$23 million is institutional operating costs, so they would be looking at \$60 million in terms of operating costs. A large chunk of that is 100% federal, particularly in Health Policy. Then they would be down to \$50 million, much of which is match. It would perhaps be best to delegate to a subcommittee of the group, since the Subcommittee would not have enough time to look at the bigger ticket programs. She cautioned that half of the operating expenses are probably federal or institutional, are the DPs that need funding now, and are 100% general fund. They could

consider making savings in OTD. While it is not a bad idea, there are some aspects of it that take some money off the table.

REP. HAINES expressed interest in helping with the study. It would do a lot to help the public understand the operation of the agency. **SEN. STONINGTON** expressed sympathy with the approach, but suggested that it would be a good idea to have an idea of Subcommittee and Department priorities. She summarized the priorities that she is hearing the Subcommittee express: getting services to people in need, trimming administration, cutting extraneous expense to services on the ground, and maximizing federal leverage. She requested Department help in identifying any possible savings in operating expenditures that could be reallocated to mental health community services.

{Tape: 2; Side: B; Approx. Time Counter: 21.5 - 26.3}

CHAIRMAN CLARK suggested that **REP. HAINES**, **SENS. KEENAN**, and **STONINGTON** work on the budget issue. It would be an unofficial Subcommittee, and they would meet when they could. **Ms. Steinbeck** added that LFD staff had requested an automated run of operating expenses from Terry Johnson, Chief Legislative Fiscal Analyst. She reviewed the approach they could use to delve into the operation and suggested that it may not translate into savings for Montana taxpayers. She gave examples of federal grants that had been given up which ended up being reallocated to other states.

{Tape: 2; Side: B; Approx. Time Counter: 26.3 - 28.7}

SEN. KEENAN remarked that he did want to get into the minutia of the budget, but that there are also big picture decisions that the Subcommittee needs to make. He wants to make sure that there is a balance.

{Tape: 2; Side: B; Approx. Time Counter: 28.7 - 41.5}

SEN. COBB distributed and explained an information sheet regarding the tobacco tax initiative revenue and items that could be restored to the budget. Postponing I-146 would allow backfilling of the governor's cuts to offset mental health. He reviewed the figures and offered his suggestions to help fix the budget through increases in cigarette and alcohol taxes and asking providers to pay a tax. They would not add programs, but would add money for mental health.

EXHIBIT (jhh12a02)

{Tape: 2; Side: B; Approx. Time Counter: 41.5 - 49.3}

SEN. KEENAN said that he is headed in the same direction. The Subcommittee needs to make the decisions. He thinks that they can patch the budget and commented that there are other options.

He referred to statute 53.21.204 regarding county responsibility and board membership with regard to community mental health centers. Currently, there is a \$116 million budget in Addictive and Mental Disorders Division (AMDD) and less than \$2 million of it comes from counties. Referring to the statute, he said that counties can assess mental health mill levies to live up to the service needs of the community, but that no one has considered the option. He read the language of the statute and suggested that it would be a gold mine for mental health. He has a bill in to repeal 204 since it is not being used.

{Tape: 3; Side: A; Approx. Time Counter: 0.2 - 0.5}

When asked how much they were looking at, **SEN. KEENAN** said that one mill statewide would be \$1.7 million which would turn into close to \$10 million as match for mental health services.

{Tape: 3; Side: A; Approx. Time Counter: 1.9 - 2.3}

Motion/Vote: **SEN. COBB** moved TO ADOPT DP 285, FTE REDUCTION.

Motion carried 6-0 by voice vote.

No motion was made on DP 294.

LFD Issue with DP 294 and 297

{Tape: 3; Side: A; Approx. Time Counter: 2.3 - 7.4}

Ms. Gervais explained that the LFD policy issue with these DPs is that they believe they can refinance services and implement the two reductions in community supports and provider rates. **Mr. Chappuis** said that it is up in the air whether these groups can be refinanced due to the risk involved. **Ms. Gervais** said that it brings up the overall policy issue of reinvesting savings in the division, elsewhere in the Department, or revert to general fund. It also brings up the issue of consistency among programs.

No motion was made on DP 297.

{Tape: 3; Side: A; Approx. Time Counter: 7.4 - 9.1}

Motion/Vote: **SEN. COBB** moved TO ADOPT DP 296, DDP GENERAL FUND REDUCTION DUE TO REFINANCING. **Motion carried 6-0.**

CHAIRMAN CLARK called a 15 minute break at 10:10. The meeting reconvened at 10:30.

{Tape: 3; Side: A; Approx. Time Counter: 14 - 15}

Director Gray said that she wanted to be clear with the Subcommittee that if there is money through refinancing available, the Department will make provider rate decisions, not the division.

EXECUTIVE ACTION ON DIRECTOR'S OFFICE**LFD Issues with Regard to MTAP and DP 31**

{Tape: 3; Side: A; Approx. Time Counter: 15 - 20}

Ms. Steinbeck stated that historic use suggests that the relay services request in the Executive Budget is understated. They will need another \$104,000 over the biennium. The LFD issue with respect to the equipment aspect of this issue is that the State is required to provide relay services, but not equipment. The legislature authorized the Department to provide equipment on a sliding fee scale.

{Tape: 3; Side: A; Approx. Time Counter: 20 - 24.9}

SEN. STONINGTON requested discussion on the issue of whether they need to provide equipment. With the use of cell phones, the money has expanded. **SEN. KEENAN** added that at the end of FY02 there was an ending fund balance of \$75,000 and at the end of the next biennium the projected end fund balance will be \$71,000. He asked for clarification on where all the money is going.

{Tape: 3; Side: A; Approx. Time Counter: 24.9 - 27.7}

In further discussion of the issue, **Ms. Steinbeck** stated that there is a structural imbalance in the program as the budget is presented. The program spends more money annually than is anticipated in tax receipts, but there is an ending fund balance of \$71,000 that could be diverted to other uses if the executive request is funded, which would create a shortfall in the coming biennium. The State is required to provide and fund the relay services, creating largest growth in the budget. Additionally, the increase in the budget is partially due to video relay service which may be required by the Federal Communications Commission (FCC). At this time, it is uncertain what the video service relay costs will be, but the FCC will make the decision on the cost in December of 2003. If the State is required to fund video relay service, there is another decision package that addresses that. Regardless of the funding of equipment, the expenses in the program will grow because of the relay services. If they provide equipment, expenses will grow faster because some people may not be able to afford the equipment to use the video relay if it is not provided.

{Tape: 3; Side: A; Approx. Time Counter: 27.7 - 30.5}

SEN. KEENAN asked how eligibility for services and equipment is determined. **Ms. Steinbeck** replied that in 2001 the Subcommittee had a committee bill to establish financial eligibility for the services because the statute was so broad that it was a potentially unconstitutional delegation of authority. The

Subcommittee established eligibility as 250% of poverty with no co-pay and up to 400% of poverty requiring co-pay. If the legislature were to make determination about providing or availability of equipment, DPHHS testified that because it is a bulk purchaser, it can get equipment for half-price. If the Subcommittee were to make limitations on equipment, there might be a way to continue bulk purchasing so that people could purchase equipment through the Department at half-price, assuming it is legal.

{Tape: 3; Side: A; Approx. Time Counter: 30.5 - 32.9}

Kryss Kuntz, Administrator of the Montana Telecommunications Access Program (MTAP), stated that the cost of bulk quantity buying was yet to be negotiated. Responding to a question from **CHAIRMAN CLARK, Ms. Kuntz** said that if individuals were to purchase equipment from MTAP, it would go into the established fund in the Department of Revenue, and they would receive the same savings. She further stated that contractors have asked that they not provide the equipment to individuals, but only to other state agencies.

{Tape: 3; Side: A; Approx. Time Counter: 32.9 - 35.8}

Motion: SEN. STONINGTON moved THAT THEY REDUCE ELIGIBILITY TO 200% OF POVERTY AND ASK THE DIVISION TO RECALCULATE.

Discussion:

Ms. Steinbeck observed that eligibility is in statute and would require a committee bill for statutory amendment. **SEN. STONINGTON** said that she does not think they should support a budget that has a reduced ending fund balance and statutory imbalance. She also said that if they try to look for ways to limit this, it may be possible that individuals could still have subsidized equipment. She added further that if they were to make a motion implicit would be a request for a committee bill.

{Tape: 3; Side: A; Approx. Time Counter: 35.8 - 38.7}

Bob Andersen, Office of Budget and Program Planning (OBPP), stated that there is a committee bill, HB 266, which removes the sliding scale and sets eligibility at 400% for MTAP. Removing the sliding scale eliminates the need for an eligibility technician. The committee bill also removes funding for the Montana School for the Deaf and Blind (MSDB). The bill could be modified without going through the whole process.

{Tape: 3; Side: A; Approx. Time Counter: 38.7 - 40.3}

Ms. Steinbeck gave some background on the issue. In advance of the session, there was a negative ending fund balance in this

account. There were two decision packages outside the immediate MTAP program, one for MSDB, which was left in the executive budget, and one for hearing equipment for low-income children. The second request was pulled when the agency determined that there was a negative ending fund balance.

{Tape: 3; Side: A; Approx. Time Counter: 40.3 - 44}

{Tape: 3; Side: B; Approx. Time Counter: 0.4 - 2}

REP. HAINES questioned the logic of having eligibility at 400% of poverty. **Ms. Kuntz** replied that it is the cap built into the statute based on the annual income of one wage earner at \$34,360. When determining how much it would cost the program to implement the guidelines on a sliding fee scale, taking into account the type of equipment, it equated to \$3,616 per year. Over the biennium, the program would stand to gain \$7,212. To implement the new guidelines, she would need a new eligibility technician and changes in applications and brochures would cost the program \$146,654 over the biennium. **REP. HAINES** expressed some disbelief in such generous eligibility calculations.

Ms. Kuntz continued that people who are hard of hearing can buy equipment similar to this from discount stores, but it may not be what the individual needs. Those who are deaf require more specialized and expensive equipment which cannot be purchased at regular stores. The equipment costs \$750, but through the Department it would cost them \$350. **REP. HAINES** expressed the belief that these people are computer savvy and said that he remains unconvinced of the necessity of this. **Ms. Kuntz** said that they are finding that not many of the totally deaf are technologically advanced. Many only just received telephone service in 1990, and they are only just experimenting with computers. **REP. HAINES** said that it seems a high level at which to be subsidizing equipment. Maybe the program needs to be reoriented to help with equipment set up, rather than providing equipment. He remained unconvinced.

{Tape: 3; Side: B; Approx. Time Counter: 2 - 7.5}

SEN. COBB asked how much the deficit will be if they do nothing.

Ms. Steinbeck replied that if the Subcommittee took no action to change programs, revenues, or expenditures, the central deficit would be \$320,000 per year. The LFD issue is that statute should be amended to direct the program to manage expenditures such that annual expenditures be sufficient to fund ongoing operations.

SEN. COBB commented that either they will have to cut back next session or raise the fee. A better way to do this would be to say that the ending fund balance has to be a certain amount.

Ms. Steinbeck said that if the statute creates a way for a person to bring a court action to force compliance, they would have to raise co-payments. The co-payments may be recoverable, depending

on where the co-payment is set. **Ms. Kuntz** commented that, in rethinking eligibility requirements, they discovered that if someone were asked to pay for 75% of the cost of equipment, and that person ended up paying \$250 or \$350, it would still be the property of the State of Montana. It would involve problems of ownership and inventory.

{Tape: 3; Side: B; Approx. Time Counter: 3.7 - 16}

SEN. STONINGTON proposed that hypothetically, if the motion were passed and they were to amend the statute, anyone within the 200% of poverty criteria would receive equipment. She asked **Ms. Kuntz** what impact she thought it would have on the low-hearing and deaf population. **Ms. Kuntz** said that to date, MTAP has served 7,000 clients. The census that they looked at indicated that there were 77,000 deaf, hard of hearing, and speech-impaired individuals in Montana. Her point is that they have not even begun to reach all of those who could use the services. The impact would be that 7,000 would be able to participate, but a greater percentage would not be able to participate. **SEN. STONINGTON** asked if an individual with a \$60,000 income could participate in the services. **Ms. Kuntz** replied that there are two issues: the relay and the equipment. Someone with such a high income could receive the services, but would have to pay for the equipment. **SEN. STONINGTON** continued that the issue is limited funds and that the fund is not growing to cover those up to 400% of poverty. It then becomes an issue of best use of funds. She questioned whether the funds are best used in providing relay services, since that is the statutory mandate, while limiting those who can receive the equipment or spreading out services. **Ms. Kuntz** said that the best package would be to include the program increase in DP 31 and the funding for MSDB at \$113,000, and fund video relay for just FY05. This would leave a projected year-end balance of \$345,984. Responding to follow up from **SEN. STONINGTON** on the issue of sustainability, **Ms. Kuntz** said that she does not have figures on CAPTEL or video relay services, but should have a better idea by FY05. **SEN. STONINGTON** said that this indicates to her that there are too many variables and uncertainties, and her inclination is to be very conservative on this. She said that they should go into it slower and not commit to a declining ending-fund balance. **Ms. Kuntz** said that she does agree with this and suggested that they rework the budget so that they do not come out with a \$71,000 ending fund balance for FY05.

{Tape: 3; Side: B; Approx. Time Counter: 16 - 20}

Responding to a question from **REP. JAYNE** about how many people would be impacted, **Ms. Kuntz** said that she does not have the exact figure, but it would be significant. **REP. JAYNE** asked for the highest income level. **Ms. Kuntz** said that there has been a

cap of about \$35,000 and as long as they were not over that they did not ask how much people made.

SEN. STONINGTON stated that she would like to add to her motion that there be no co-pay within the 200%, which would eliminate the need for an eligibility technician, and that there be a committee bill to make statutory changes.

{Tape: 3; Side: B; Approx. Time Counter: 18.9 - 19}

Motion/Vote: **SEN. STONINGTON** moved TO REDUCE ELIGIBILITY TO 200% OF POVERTY WITH NO CO-PAY ASKING THE DIVISION TO RECALCULATE, AND REQUESTED A COMMITTEE BILL TO AMEND STATUTE. Motion carried 4-2 with COBB and JAYNE voting no on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

SEN. STONINGTON suggested that before they continue action on any more DPs in this program, they should recalculate the budget based on that scenario.

LFD Issue Regarding Relay Services

{Tape: 3; Side: B; Approx. Time Counter: 20.6 - 28.6}

Ms. Steinbeck suggested that the relay services for video networks may be overstated the first year while the other relay services are understated, and do not fully offset each other.

Ms. Kuntz stated that 48% to 58% of her budget goes to relay services, and only 11.65% of her budget goes toward purchasing equipment. She commented that she does not see how limiting or restricting the distribution of equipment will see them through FY05. **SEN. STONINGTON** asked whether people are required to go to CAPTEL or whether they can continue to be nonvideo. **Ms. Kuntz** replied that not everyone would have to go to it. She is required to negotiate a contract for the video relay service, but without the equipment there is little use for the service.

{Tape: 3; Side: B; Approx. Time Counter: 28.6 - 29.6}

Director Gray suggested that they put together a response to some of the questions. She added that the reason the ending fund balance has gone down is that collectively the Department has used it for other program needs.

{Tape: 3; Side: B; Approx. Time Counter: 29.6 - 35.4}

Ms. Steinbeck said that they could take action on DP 100. The action would be reflected in Health Policy Services. It would replace the general fund within the Executive Budget for Tobacco Prevention and Control with state special revenue (SSR) from I-146 which was passed in November. The statute passed within I-146 did not prohibit supplantation so this is within the meaning

and purpose of the statute. The money is part of the Tobacco Prevention and Control money and uses \$500,000 of the general fund and \$1.5 million in federal funds. **SEN. STONINGTON** said that there should be a tobacco prevention program. **Ms. Steinbeck** further explained that it pays part of the state match and part of the tobacco control program.

{Tape: 3; Side: B; Approx. Time Counter: 35.4 - 39.4}

Motion: **SEN. STONINGTON** moved TO ADOPT DP 100, REDUCE TOBACCO PREVENTION FUNDING.

Discussion: **REP. JAYNE** asked how this is different than the other motion. **SEN. STONINGTON** said that the Department has already calculated the use of \$500,000 from the \$9.5 million that is part of the tobacco settlement money stipulated by I-146 to go to tobacco prevention programs. The DP acknowledges that it is an appropriate use of the money. There is a corresponding federal match. **Ms. Steinbeck** said that the original LFD issue was that the Governor did not request an expansion of tobacco control. The funding switch merely continues the existing programs without any expansion. The \$500,000 is only the amount in the Governor's budget for tobacco control. The Governor has requested that instead of funding that out of general fund it be funded out of the tobacco settlement money. The Governor also left \$8.5 million for tobacco settlement money allocated by I-146 unused.

{Tape: 3; Side: B; Approx. Time Counter: 39.4 - 39.8}

Vote: Motion carried 6-0 on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

{Tape: 3; Side: B; Approx. Time Counter: 39.8 - 42}

Ms. Steinbeck suggested that if they are delaying action on the MTAP program, DP 29 can be considered later. DP 32 is an abstinence proposal and is a federal grant. The proposal from the executive would request \$84,000 in federal funds and funding for one FTE. The FTE does come out of the federal funding.

{Tape: 3; Side: B; Approx. Time Counter: 42 - 43.7}

Motion/Vote: **REP. CLARK** moved TO ADOPT DP 100, MONTANA ABSTINENCE PROGRAM. Motion carried 6-0 on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

{Tape: 3; Side: B; Approx. Time Counter: 43.7 - 45}

Motion: **REP. CLARK** moved TO ADOPT DP 33, CORPORATION FOR NATIONAL SERVICES (VISTA).

Discussion: SEN. STONINGTON asked what programs are involved in VISTA. Director Gray said that there are three programs that employ VISTA, and they all use volunteers.

Vote: Motion carried 6-0 on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

Information on the individuals waiting for DD services was distributed.

EXHIBIT (jhh12a03)

{Tape: 3; Side: B; Approx. Time Counter: 47.7 - 49.5}

{Tape: 4; Side: A; Approx. Time Counter: 0.4 - 5.}

Ms. Steinbeck distributed and explained a spreadsheet on the actions taken by the Subcommittee. The net effect of the Subcommittee's actions is to add \$7.5 million over the biennium back into the legislative budget. The reductions in the legislative budget to date are \$22 million and \$20 million. In DPHHS there will be no actions taken to define reductions. Prior to Subcommittee action today, there was \$7.5 million of the general fund added. They have now added \$10.6 million.

EXHIBIT (jhh12a04)

ADJOURNMENT

Adjournment: 11:36 A.M.

REP. EDITH CLARK, Chairman

SYDNEY TABER, Secretary

EC/ST

EXHIBIT (jhh12aad)